IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 93 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA :

HONOURABLE MR.JUSTICE KS JHAVERI :

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHINABHAI ARJANMBHAI MAJIRANA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR BC DAVE for Appellant(s) : 1,
MR HL JANI APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 14/12/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE KS JHAVERI)

1.0 This appeal is directed against the judgment and order dated 24.12.1999 passed by the learned Addl. Sessions Judge, Banaskantha at Palanpur in Sessions Case No.74 of 1999 whereby, the appellant – original accused was convicted for the offences punishable u/s. 302 of the Indian Penal Code [for short, "the I.P.C."] and Section 27(1) of the Arms Act. For conviction u/s. 302 of the I.P.C., the appellant was sentenced to undergo imprisonment for life with fine of Rs.500/- and in default of payment of fine, simple imprisonment for a further period of three months; while for conviction u/s. 27(1) of the Arms Act, he was sentenced to undergo rigorous imprisonment for three years with fine of Rs.500/- and in default of payment of fine, simple imprisonment for a further period of three months. Both the sentences were ordered to run concurrently. The appellant was given the benefit of set-off.

2.0 The facts in brief, as brought out by the

prosecution, are as under;

2.1 At about a week prior to 03.01.1999, while the appellant had gone out of his house, deceased – Majirana Ramsinh Aambaji went to the house of the appellant in a drunken condition and used filthy language at the wife of the appellant and also issued threats. While the appellant was returning to his house, he noticed the deceased leaving his house. On reaching his house, he asked his wife as to why the deceased had come to their house to which she informed the appellant about the aforesaid incident.

2.2 Thereafter, on 03.01.1999, at around 1930 hrs., while the appellant was passing through a nearby market place, the deceased stopped him on the way and instructed him to come along with him to the house of one Laxmiben for the purpose of making a telephone call. On reaching the house of said Laxmiben, the deceased instructed the appellant to wait outside. However, said Laxmiben did not permit the deceased to enter her house as the deceased was heavily drunk and, therefore, the deceased came back.

Thereafter, some altercation took place between the appellant and the deceased on account of which the deceased used abusive language at the appellant and also attempted to inflict knife blows on him.

2.3 Being frightened by the said act of the deceased, the appellant rushed to his home and as he felt that the deceased may attack him and his family, the appellant came out of his house with a '*dharia*' [a sharp-edged weapon] in his hands. At that time, the appellant noticed that the deceased was proceeding towards his house with the knife and was raring to attack him. Therefore, the appellant attacked the deceased and inflicted a *'dharia'* blow on the neck of the deceased. As a result thereof, the deceased ran away from the said place. However, after reaching a certain distance, he fell down.

2.4 The appellant went to the place where the deceased was lying and inflicted *'dharia'* blows on the deceased. In that process, the *'dharia'* broke-off at the handle and the other part of it fell away at a nearby place.

Thereafter, the appellant snatched the knife from the deceased and inflicted knife blows on the stomach and chest portion of the deceased. A crowd gathered at the scene of offence.

2.5 Thereafter, the appellant went to Deesa City Police Station and surrendered himself to the custody. He narrated about the aforesaid incident to the Police Inspector who recorded the same in the form of a complaint. The said complaint was later registered as I – C. R. No. 2 of 1999 for offences punishable u/s. 302 of the I.P.C. and Section 27(1) of the Arms Act. Investigation into the alleged offence was handed over to Police Inspector – Mr. J.M. Shrimali.

2.6 The Investigating Officer went to the scene of offence and carried out inquest '*panchnama*'. '*Marnottar*' form was filled up and necessary arrangements were made for sending the dead body for performing post-mortem. '*Panchnama*' of the scene of offence was done in the presence of '*panchas*' and necessary '*muddamal*' articles were also collected. The clothes worn by the deceased at the

time of the incident in question were also seized by way of a separate *'panchnama'*. The *'muddamal'* knife and the clothes worn by the appellant at the relevant point of time were also seized by way of a separate *'panchnama'*. Arrest *'panchnama'* was done and after completing necessary formalities the appellant was sent to judicial custody. The '*muddamal*' articles so collected were sent to the F.S.L. for examination. On receipt of the F.S.L. Report, PM notes and other reports, they were kept in the investigation file.

2.7 Further investigation was carried out and statements of several witnesses were recorded. On completion of investigation, charge-sheet was filed against the appellant in the Court of learned Judicial Magistrate, First Class, Deesa. Since the case was exclusively triable by the Court of Sessions, the learned Judicial Magistrate, First Class, Deesa committed the case to the Sessions Court, Banaskantha at Palanpur and the same was numbered as Sessions Case No. 74 of 1999. As the appellant pleaded not guilty to the said charge, trial was conducted against him.

3.0 The prove the guilt against the appellant, the prosecution has examined in all ten witnesses viz. PW – 1 Laxmiben Lagdhirji at Exhibit – 6, PW – 2 Dharmiben Viramji at Exhibit – 7, PW – 3 Chaganji Sonaji at Exhibit – 8, PW – 4 Harjibhai Kanjibhai at Exhibit – 9, PW – 5 Karsanji Sonaji at Exhibit – 11, PW – 6 Jorabhai Munjabhai at Exhibit – 14, PW – 7 Jagdishchandra Manilal Shrimali at Exhibit – 16, PW – 8 Rameshchandra Chunilal Shah at Exhibit – 31, PW – 9 Dr. Dhirajbhai Devabhia Jaganiya at Exhibit – 32 and PW – 10 Jainarayan Rameshwardayar Srivastav at Exhibit – 35.

3.1 The prosecution had also relied upon several documentary evidence, more particularly, the evidence in the form of inquest '*panchnama*' at Exhibit – 13, the '*panchnama*' of the scene of offence at Exhibit – 10, the PM Note at Exhibit – 33 and the *'panchnama'* regarding seizure of weapon at Exhibit – 17.

3.2 On submission of the closing 'purshis', the further

statement of the appellant was recorded u/s. 313 of the Code of Criminal Procedure, 1973. After hearing learned counsel for the respective parties, the learned Addl. Sessions Judge passed the impugned judgment and order convicting the appellant for the offences as narrated in the earlier part of this judgment. Hence, the present appeal.

4.0 Mr. B. C. Dave learned Advocate for the appellant has submitted that the entire case of the prosecution rests upon the complaint at Exhibit – 36 which has been filed by the appellant himself. He has submitted that even the Court below has come to conclusion that an admission made by an accused before the police is not admissible in evidence. However, in spite of that the Court below has relied upon the same. He has, therefore, submitted that the impugned judgment passed by the Court below is bad in the eyes of law and deserves to be quashed and set aside.

4.1 Learned Advocate has further submitted that not a single witness has supported the case of the prosecution on material point except the P.S.O. who has been examined

as PW – 6 at Exhibit – 14, the Investigating Officer who has been examined as PW – 7 at Exhibit – 16 and the Medical Officer who has conducted the post-mortem of the deceased as PW – 9 at Exhibit – 32. He has contented that in the absence of material evidence on record, the Court below ought not to have convicted the appellant for the alleged offence in question. Hence, the impugned judgment passed by the Court below deserves to be quashed and set aside and the appellant deserves to be acquitted from the alleged offence in question.

5.0 Mr. H. L. Jani learned APP has relied upon the evidence of the aforesaid three witnesses and has admitted that except the evidence of the said three witnesses, no other witness/s has supported the case of the prosecution. He has, however, submitted that the documentary evidence on record in the form of F.S.L. Report at Exhibit – 27 and the complaint at Exhibit – 36 clearly establishes the guilt of the appellant. Hence, no interference is required by this Court in this appeal.

6.0 Heard learned counsel for the respective parties. Having perused the entire oral as well as documentary evidence available on record, it appears that the case of the prosecution mainly rests upon the documentary evidence in the form of complaint at Exhibit – 36 and the oral evidence in the form of depositions of PW – 6 Jorabhai Munjabhai at Exhibit – 14, PW – 7 Jagdishchandra Manilal Shrimali at Exhibit – 16 and PW – 9 Dr. Dhirajbhai Devabhia Jaganiya at Exhibit – 32.

7.0 So far as the documentary evidence is concerned, it is to be noted that the complaint at Exhibit – 36 has been filed by the appellant himself after the commission of the alleged offence in question. It was during this period only that the appellant had allegedly produced the *'muddamal'* weapon – knife alleged to have been used by him in the commission of the offence in question.

7.1 The principle regarding the admissibility of evidence given by an accused before the police is well settled. In the present case, indisputably, the complaint at

Exhibit – 36 has been filed by the appellant in relation to an offence allegedly said to have been committed by him. Hence, the said complaint at Exhibit – 36 does not have any evidentiary value and the Court below has also rightly not believed the same. Therefore, we are not discussing it in detail and we accept the findings recorded by the Court below regarding the same.

7.2 It appears that the Court below has relied upon the evidence, i.e. the blood stains found on the *'muddamal'* weapon – knife alleged to have been produced by the appellant at the time when he surrendered to the custody. It is pertinent to note that the said *'muddamal'* weapon, alleged to have been produced by the appellant after the commission of the offence in question, was produced by him at the time when the complaint at Exhibit – 36 was given by him wherein he has been shown as the accused person. It is true that the Blood Group of the blood stains found on the *'muddamal'* weapon – knife and the clothes of the appellant seized while he had surrendered to the custody are similar to the Blood Group of the deceased. However,

since the said evidence has been collected in connection with the complaint filed by the appellant himself where he has been shown as the accused, in our opinion, the same will not have any evidentiary value. In that view of the matter, we are of the view that the documentary evidence in the form of complaint at Exhibit – 36 and the *'panchnama'* regarding seizure of *'muddamal'* weapon – knife cannot be admitted as evidence in order to prove the guilt of the appellant.

8.0 So far as the discovery of a *'dharia'* from the place of offence is concerned, it is to be noted that the Report of the F.S.L. at Exhibit – 29 does not support the case of the prosecution. The F.S.L. Report does not state as to which Blood Group the human blood stains found on it belonged to, on account of the non-availability of proper sample to carry out the test. In spite of that the Court below has placed heavy reliance on the same on the basis of the evidence led by PW – 7 at Exhibit – 16 wherein, the said witness has made reference about both PW – 1 at Exhibit – 6 and PW – 2 at Exhibit – 7 as eye-witnesses to the alleged

incident in question, though both the said two witnesses have been declared as 'hostile'. Apart from that it has to be kept in mind that the said 'weapon' has been recovered from a public place. Hence, it could not be concluded beyond doubt that the said *'dharia'* was the one alleged to have been used by the appellant in the crime in question.

8.1 Merely because human blood stains have been found on the *'dharia',* alleged to have been seized from a place near to the place of incident, it could not be said that the said 'weapon' was used by the appellant in the commission of the alleged offence in question. However, the Court below has relied upon the same and convicted the appellant by presuming that the said blood stains found on the *'dharia'* was that of the deceased, in spite of the absence of any evidence on record to that effect. Hence, it is clear that the Court below has proceeded on assumptions and presumptions and not on the basis of the evidence available on record while arriving at the said conclusion.

9.0 So far as the evidence led by the three witnesses

is concerned, it may be noted that the said three witnesses are Police officials / Medical Officer and that they are not eye-witnesses to the alleged incident in question. Except these witnesses, no other witness has supported the case of the prosecution to any extent much less on any material point.

9.1 PW – 6 Jorabhai Munjabhai at Exhibit – 14 is the police official who was discharging his duties as the P.S.O. on the date of the alleged incident in question and who had registered the complaint given by the appellant. Except the above, this witness does not provide any other evidence which may be of any help to the prosecution case.

9.2 PW – 7 Jagdishchandra Manilal Shrimali at Exhibit – 16 is the Police Inspector who had carried out necessary investigation into the alleged offence in question. In his deposition, PW – 7 has stated that in the statements given before the police both PW – 1 Laxmiben Lagdhirji at Exhibit – 6 and PW – 2 Dharmiben Viramji at Exhibit – 7 have categorically narrated about the entire incident in

detail, including the role played by the appellant. If we go through the evidence led by this witness at Exhibit – 16, it appears that both PW – 1 Laxmiben Lagdhirji at Exhibit – 6 and PW – 2 Dharmiben Viramji at Exhibit – 7 are eye-witnesses to the alleged incident in question and their say support the case of the prosecution on all material points. However, both these witnesses have not supported the case of the prosecution and they have been declared as 'hostile' before the Court below. Thus, in our opinion, if the prosecution case wants to get any assistance from the evidence led by PW – 7 at Exhibit – 16, then the evidence led by this witness requires corroboration. But, we are afraid that the evidence led by this witness does not get any corroboration from any other oral or documentary evidence available on record.

9.3 The prosecution has tried to rely upon the evidence led by the Medical Officer – Dr. Dhirajbhai Devabhai Jaganiya as PW – 9 at Exhibit – 32. From the oral evidence led by this witness as also the documentary evidence in the form of PM note at Exhibit – 33, it is evident

that the deceased died a homicidal death. However, it is to be noted that the said fact was not disputed before the Court below or, in that matter, even before this Court. Hence, we have no hesitation in affirming the conclusion arrived at by the Court below that the deceased died a homicidal death. Thus, the evidence led by the aforesaid three witnesses shall not be of any help to the prosecution case.

10.0 Before concluding, we would like to state that it is true that a cold-blooded murder was executed in a public place. However, on account of the absence of any cogent evidence on record pointing towards the guilt of the appellant, we are unable to uphold the conviction recorded by the Court below. Hence, we are constrained to hold that the impugned judgment and order of conviction passed by the Court below is unjust and improper as the same has been passed without properly appreciating the evidence on record. The jail record shows that the appellant has undergone imprisonment for a period of more than eight years. Therefore, in the interest of justice, the appellant

deserves to be acquitted from the alleged offence in question.

11.0 For the foregoing reasons, the appeal is allowed. The impugned judgment and order dated 24.12.1999 passed by the learned Addl. Sessions Judge, Banaskantha at Palanpur in Sessions Case No.74 of 1999 is quashed and set aside. The appellant is acquitted from all the charges leveled against him. The appellant is in custody and, therefore, the Jail Authority is directed to release him from the custody forthwith, is he is not required in connection with any other offence. Office is directed to send the Records & Proceedings to the trial Court concerned forthwith.

[R. P. DHOLAKIA, J.] [K. S. JHAVERI, J.]

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